

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

Terry Bell,

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Plaintiff,

)

)

-vs-

)

Civil No.

)

)

INTERNAL REVENUE SERVICE,

)

UNITED STATES OF AMERICA,

)

CV-00-H-3540-S

)

Defendant.

)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, (hereinafter "FOIA"), 5 USC 552, as amended, and the Privacy Act, 5 USC 552(a), to order the production of agency records improperly withheld from plaintiff.

2. This Court has jurisdiction over this action pursuant to 5 USC 552(a)(4)(B), and 5 USC 552a(g)(5).

3. Terry Bell (hereinafter "Bell"), plaintiff herein, is the requestor of the agency records which have been improperly withheld.

4. Defendant above named (hereinafter "IRS"), is an agency of the United States and has possession of and control over the records Bell seeks.

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COUNT I

FACTS

5. On August 14, 2000, Bell requested copies of the following documents from the IRS District Director, Disclosure Officer, New Orleans Office:

ITEM 1. All administrative files for the tax periods 1988, 1989, 1990, 1991, 1992, 1993 and 1994 for Terry Bell.

ITEM 2. All investigation files for Terry Bell for the calendar years 1988 through and including 1996 located in the Examination and Collection Divisions.

ITEM 3. Individual Master File Complete for the tax periods 1988 through and including 1996.

ITEM 4. Individual Master File Specific for the tax periods 1988 through and including 1996.

ITEM 5. Individual Master File Literal for the tax periods 1988 through and including 1996.

ITEM 6. All Investigative History sheets pertaining to Terry Bell for the tax periods 1988 through and including 1996. These should be located with the Collection Division.

ITEM 7. All certified mail logs pertaining to any notices sent by certified mail to Terry Bell for the tax periods 1988 through and including 1996.

ITEM 8. A copy of all notices sent to Terry Bell for the tax periods 1988 through and including 1996, pursuant to the provisions of 26 U.S.C. Sections 6303, 6212, and 6331(d). These are commonly referred to as the notice of assessment and demand for payment (6303), the statutory notice of deficiency (6212), and the final pre-levy notice (6331(d)).

ITEM 9. A copy of all certified mail return receipts pertaining to any notices sent to Terry Bell for the tax

periods 1988 through and including 1996.

6. Bell's FOIA request specifically stated that the IRS should not seek additional time to respond as he would not voluntarily extend the statutory time period for the requisite determination; the request also expressly notified the IRS of what constitutes administrative exhaustion.

7. By letter dated September 13, 2000, the Disclosure Officer, Wanda T. Ray, responded to Bell by requesting more time to locate and consider releasing the IRS records. Ray states that "[u]nder certain circumstances we may extend the 20 business day time limit for responding to your request by an additional 10 business days."

8. By letter of September 27, 2000, the Disclosure Officer, Wanda T. Ray, requested additional time to respond to Bell's FOIA request dated August 14, 2000. Ray stated that "[w]e will try to respond within 120 days from the date of this letter."

9. Bell has exhausted his administrative remedies. 5 U.S.C. Section 552(a)(6)(C) deems exhaustion to occur on expiration of the relevant time limits. Section 552(a)(6)(C) provides for constructive exhaustion, which permits early accrual of a cause of action in the interests of timely disclosure.

10. The requested documents are reasonably described in

order to locate same without identifying a system of records.

11. Bell has a statutory right to the records he seeks, and there is neither a legal basis for the IRS' refusal to release such records to him nor to ignore the statutory mandates enacted by Congress.

12. The IRS denial of Bell's request is arbitrary and capricious.

13. The IRS has failed to comply with the mandates of the Freedom of Information Act and their own regulations in their failure to produce responsive documents to Bell's request.

WHEREFORE, plaintiff prays that the Court:

(1) Order the IRS to immediately release all records requested by Bell in his request of August 14, 2000;

(2) Declare that the IRS' refusal to release the records requested by plaintiff is unlawful;

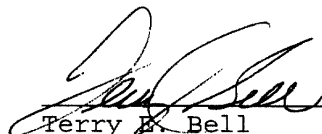
(3) Issue a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding of records from Bell pursuant to 5 USC 552(a)(4)(F);

(4) Award Bell reasonable attorney fees and other litigation costs in this action; and

(5) Grant such other and further relief as the Court may

deem just and proper.

Respectfully submitted this 8th day of ~~November~~ ^{December}, 2000.

A handwritten signature in black ink, appearing to read "Terry B. Bell", is written over a horizontal line.

Terry B. Bell
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